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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/590,560 | 08/24/2006 | Bernard Derek Frutin | 36290-0428-00-US | 8582 |

23973 7590 08/12/2009

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| EXAMINER |
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NICHOLS II, ROBERT K

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| ART UNIT | PAPER NUMBER |
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3754

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08/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|--|--|
| Office Action Summary | Application No. 10/590,560 | Applicant(s) FRUTIN, BERNARD DEREK | |
| | Examiner ROBERT K. NICHOLS II | Art Unit 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,10,14,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 10, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/24/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species III – claims 1, 2, 10, 18 and 19 in the reply filed on 07/07/2009 is acknowledged.

Claims 4 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sullivan et al. (US 3,062,417).

Regarding claim 1, Sullivan discloses a valve assembly for use with a dispensing apparatus (fig. 4), the valve assembly including a valve 6; a nozzle assembly 8/9; and a collar 10/15 which in use engages with a container 1 of the dispensing apparatus with which the valve assembly is used and surrounds the nozzle assembly 8/9 (see figures 1-4), the collar 10/15 including variable spacer means 11/16 adapted to contact the nozzle assembly 8/9 when the nozzle assembly 8/9 is displaced in a lateral direction

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and arranged to limit lateral travel of the nozzle assembly 8/9 by a variable amount according to the direction in which the nozzle assembly 8/9 is displaced (see figures 1-4 and column 2, line 67- column 3, line 2).

Regarding claim 2, Sullivan discloses the valve 6 being a tilt valve including a valve stem (see figure 4, and column 2, lines 34-37).

Regarding claims 18 and 19, Sullivan discloses the variable spacer means 11/16 includes a plurality of recessed portions/cam surfaces of the collar of different depths (see figures 2 and 4), each recessed portion/cam surface being adapted to contact the nozzle assembly 8/9 when the nozzle assembly 8/9 is displaced in a lateral direction towards the recessed portion, and provide a limit of lateral travel, the limit of lateral travel varying with the direction in which the nozzle assembly is displaced (see figures 1-4 and column 2, line 67- column 3, line 2).

Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg (US 3,249,260).

Regarding claim 1, Goldberg discloses a valve assembly for use with a dispensing apparatus (fig. 3), the valve assembly including a valve; a nozzle assembly 38/40/42; and a collar 16 which in use engages with a container 11 of the dispensing apparatus with which the valve assembly is used and surrounds the nozzle assembly 38/40/42 (see figures 2 and 4, and column 2, line 65 - column 3, line 2), the collar 16

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including variable spacer means 26/28 adapted to contact the nozzle assembly 38/40/42 when the nozzle assembly 38/40/42 is displaced in a lateral direction and arranged to limit lateral travel of the nozzle assembly 38/40/42 by a variable amount according to the direction in which the nozzle assembly 38/40/42 is displaced (see figures 1-3 and column 3, lines 26-30).

Regarding claim 10, Goldberg discloses the collar 16 being adapted to press fit on to a rolled flange 18 of a standard pressurized container 11 (see figure 3 and column 2, line 71- column 3, line 2).

Applicant should note that it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchinson, 69 USPQ 138.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shay (US 3,721,423), Jordan (US 3,608,791), Matern (US 3,884,399) and Lund et al. (US 5,918,774) show other devices.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754